

ESTTA Tracking number: **ESTTA375530**Filing date: **10/27/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Lone Wolf Distributors, Inc.		
Entity	Corporation	Citizenship	Idaho
Address	57 Shepard Road P. O. Box 3549 Oldtown, ID 83822-3549 UNITED STATES		

Attorney information	Robert C. Hyta Wells St. John P.S. 601 W. 1st Avenue Suite 1300 Spokane, WA 99201 UNITED STATES docketing@wellsstjohn.com, sschwarz@wellsstjohn.com Phone:(509) 624-4276
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Registration Subject to Cancellation

Registration No	3609155	Registration date	04/21/2009
Registrant	D'Acquisto, Andrae T. 3314 East Grange Avenue Cudahy, WI 53110 UNITED STATES		

Goods/Services Subject to Cancellation

Class 013. First Use: 2006/12/31 First Use In Commerce: 2007/12/31 All goods and services in the class are cancelled, namely: Guns
Class 028. First Use: 2006/12/31 First Use In Commerce: 2007/12/31 All goods and services in the class are cancelled, namely: Hunting equipment and hunting accessories, namely, bows, bow risers, bow cams, arrow shafts, arrowheads, hunting blinds and climbers' harnesses, namely, safety harnesses and descent controlling devices

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77630520	Application Date	12/10/2008
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	LONE WOLF
Design Mark	 The logo consists of the words "Lone Wolf" in a large, black, serif font, centered within a rectangular box.
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1998/01/16 First Use In Commerce: 1998/01/16 handgun components and accessories, namely; handgun laser pointing devices, handgun suppressors, and handgun holsters Class 013. First use: First Use: 1998/01/16 First Use In Commerce: 1998/01/16 handgun parts, namely; handgun frames, handgun grips, handgun barrels, handgun magazines, and handgun sites

Attachments	77630520#TMSN.jpeg (1 page)(bytes) LO46-501_Petition.pdf (4 pages)(171894 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Robert C. Hyta/
Name	Robert C. Hyta
Date	10/27/2010

In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board

In the Matter of Registration No. 3,609,155

Date of Issue: April 21st, 2009

_____	}
Lone Wolf Distributors, Inc.	}
	Petitioner,}
v.	}
D'Acquisto, Andrae T.	}
	Registrant.}
_____	}

Cancellation No.:

BOX TTAB/FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Petition for Cancellation

Petitioner, Lone Wolf Distributors, Inc., an Idaho corporation having its principal place of business at 57 Shepard Rd., P.O. Box 3549, Oldtown, Idaho 83822-3549, believes that it is or will be damaged by Registration No. 3,609,155 and hereby petitions to cancel same.

As grounds of this Petition, it is alleged that:

1. Registration 3,609,155 was applied for and granted to Andrae T. D'Acquisto, 3314 East Grange Avenue, Cudahy, WI 53110 (The Registrant). The Registrant has obtained a registration for "Lone Wolf" for "Guns" and "Hunting equipment and hunting accessories, namely, bows, bow risers, bow cams, arrow shafts, arrowheads, hunting blinds and climbers' harnesses, namely, safety harnesses and descent controlling devices" claiming a first use of 12/31/2006 and first use in commerce of 12/31/2007.

2. Petitioner is engaged in the firearm accessory business and has been providing goods and services in the United States since 1998.

3. Petitioner has developed extensive goodwill throughout the United States with respect to its mark "Lone Wolf".

4. Petitioner, prior to Registrant, in most geographically distinct market areas in the United States, has used the mark "Lone Wolf" long prior to any use, if at all, by the Registrant of "Lone Wolf".

5. Petitioner has spent substantial sums in the advertising and promotion throughout the United States of its goods and/or services provided under the "Lone Wolf" mark.

6. As a result of the expenditure of considerable sums for promotional activities, advertising, and by virtue of the excellence of its goods and/or services, the Petitioner has garnered for its "Lone Wolf" mark a valuable reputation.

7. Registration No. 3,609,155 was not properly obtained in that the formal application papers filed by Registrant, particularly the Statement of Use under 15 USC § 1051(d), stated that Registrant first used the mark in commerce with the United States on 12/31/2007 for "Guns" and "Hunting equipment and hunting accessories, namely, bows, bow risers, bow cams, arrow shafts, arrowheads, hunting blinds and climbers' harnesses, namely, safety harnesses and descent controlling devices" as evidenced by a digitally photographed label which is applied to the goods and/or packaging or containers for the goods. Trademark Act Section 45 requires use of the mark "on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto." The Registrant did not meet this standard by providing a photograph of a patch that may be applied to any or all goods or services, if any at all. Said statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said statements, the U.S. Patent and Trademark Office did, in fact, improperly grant said registration. As such, the Registrant did not qualify the mark for Federal Registration, and Registration No. 3,609,155 is invalid. Moreover, it has statutorily abandoned its mark by not using it in interstate commerce for three consecutive years. *See* Trademark Act, §45.

8. Registrant's mark, namely "Lone Wolf" is a substantial duplicate of Petitioner's trademark, and is applied to services which are used to sell the similar goods as those sold by the Petitioner. The Registrant's mark is sufficiently similar to the Petitioner's mark so that if the Registrant did eventually use the mark in commerce and then expanded its services into geographical areas where Petitioner was first to use its mark "Lone Wolf", confusion and deception as to the origin of Registrant's services bearing the Registrant's mark would occur, all to the damage and detriment of the Petitioner. Confusion in trade resulting in damage and injury to the Petitioner would be caused or would result by reason of the similarity between the Registrant's mark and the Petitioner's mark. Many persons familiar with Petitioner's mark would be likely to buy Registrant's goods as and for a product made, sold by, or associated with the Petitioner. Moreover, even if such person should notice any difference whatever between the Petitioner's mark and the Registrant's mark, they would nevertheless be likely to believe and would be justified in so believing that the Registrant's mark and the Petitioner's mark are, in fact companion marks used by the same manufacturer on companion or related goods and/or services. Any such confusion in trade might result in loss of sales to the Petitioner. Furthermore, any defect, objection or fault found with the Registrant's products marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Petitioner has established for its products

merchandised under its mark. If the Registrant is permitted to continue to maintain its invalid registration, the same may be deemed incontestable after five (5) years from the date of registration, and Registrant would thereby obtain an incontestable right to the use of its mark in commerce and in any event, the continued existence of such registration casts a cloud upon Petitioner's right to continue to use and expand the use of the mark "Lone Wolf".

9. Petitioner has been and will continue to be damaged by the issuance and existence of Registration No. 3,609,155 issued to the Registrant, in that since at least 1989, Petitioner has continuously used the mark "Lone Wolf" in the United States in connection with its firearm accessory business.

10. If the Registrant is permitted to continue to maintain its invalid registration, the same may be deemed incontestable after five (5) years from the date of registration, and Registrant would thereby obtain an incontestable right to use the "Lone Wolf" mark in commerce. Further, the continued existence of such registration casts a cloud upon Petitioner's own right to continue to use, develop, and expand the use of the mark "Lone Wolf" in the United States. Such registration would thus be a source of damage and injury to the Petitioner.

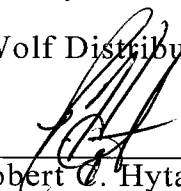
11. A duplicate copy of this Petition and the fee required in §2.6(a)(16) (for each class) is enclosed herewith.

Wherefore, Petitioner prays that Registration No. 3,609,155 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

Lone Wolf Distributors, Inc.

Date: 10/27/0

By : 
Robert C. Hyta
Reg. No. 46,791

Attorney for Petitioner
Wells St. John P.S.
601 W. 1st Avenue, Suite 1300
Spokane, WA 99201
(509) 624-4276


CERTIFICATE OF SERVICE

I hereby certify a copy of this Petition for Cancellation has been deposited with the U.S. Postal Service via Express Mail addressed to the Attorney of Record for Registrant, as follows:

Mathew E. Corr
Boyle Fredrickson S.C.
840 N. Plankinton Avenue
Milwaukee WI 53203

On the below indicated date.

Dated: 10/27/10

Signature: 
Robert C. Hyta